IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

WP(C).No. 15449 of 2007(L)

OPTP.22/2007 of D.C. & SESSIONS COURT,KOLLAM
OS.159/1982 of MUNSIFF COURT, PUNALUR

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PETITIONER:

JAYASREE,
JAYAVILASOM, PANAYANCHERRY, ANCHAL P.O.,
KOLLAM DISTRICT, KERALA STATE.

BY ADV. SRI.T.S.JOHN
SRI.M.S.RADHAKRISHNAN NAIR

RESPONDENTS:

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1. RADHAMANI AMMA,
ASWATHY BHAVAN, PANAYANCHERRY, ANCHAL P.O.,
KOLLAM.

2. THAHIRA IBRAHIM,
REJI MANZIL, THAZHAMEL, ANCHEL, KOLLAM DISTRICT.

3. FAZALUDEEN,
PUTHUVEETTIL KIZHAKKETHIL ASRAMAM, KOLLAM.

4. NOORUDEEN,
PUTHUVEETTIL KIZHAKKETHIL, ASRAMAM,
KOLLAM.

5. JALALUDEEN,
PUTHUVEETTIL KIZHAKKETHIL, ASRAMAM,
KOLLAM.

6. SABIA,
PUTHUVEETTIL KIZHAKKETHIL, ASRAMAM,
KOLLAM.

7. NAZEER,
PUTHUVEETTIL KIZHAKKETHIL, ASRAMAM,
KOLLAM.

8. NAZEEMA,
PUTHUVEETTIL KIZHAKKETHIL, ASRAMAM,
KOLLAM.

9. KAMALUDEEN,
PUTHUVEETTIL KIZHAKKETHI, ASRAMAM,
KOLLAM.

10. PRABHAKARAN PILLAI,
CHAMAKALA VEEDU, PANAYANCHERRY,
ANCHAL P.O., KOLLAM.

11. MAYADEVI,
CHAMAKALA VEEDU, PANAYANCHERRY, ANCHAL P.O.,
KOLLAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23.5.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

WP(C)No.15449 OF 2007 L

Dated this the 23rd May, 2007.

JUDGMENT

This is an application filed by the petitioner challenging the order of the learned District Judge, Kollam in O.P(T.P) 22/2007. The learned District Judge dismissed the transfer application on the ground that there was a direction from the High Court for expeditious disposal and therefore it is not within his discretion to transfer the suit to any other Court. Learned counsel for the writ petitioner submits that his party had been deprived of any opportunity to let in sufficient evidence and also was not granted permission to cross-examine the Commissioner and there was an insult from one of the counsel appearing for the defendants. These are all matters which cannot be considered as sufficient to transfer the case unless it is proved that the learned Munsiff is biased. Mere averment or allegations levelled against a presiding officer cannot be considered as evidence for the said purpose. I have gone through the entire files and that nothing would show that the Munsiff is acting in a partisan manner. The allegation levelled by the petitioner is against the counsel who cross-examined the Commissioner. It is true that there was no counsel for the petitioner at that time.

So, taking into consideration the entire aspects and in the interest of justice it is necessary to grant an opportunity to the petitioner to recall the Commissioner and cross-examine her and that petitioner be permitted to appoint a counsel of her choice for the said purpose. Learned Munsiff shall also see that irrelevant questions and questions affecting the dignity of persons shall not be put which is quite unwarranted for a proper disposal of this case. Therefore the writ petition is disposed of as follows:-

i) The writ petitioner is permitted to file an application for recalling the Commissioner and the Court to permit her to appoint a counsel of her choice and cross-examine her with reference to the subject matter and points in issue.

ii) The court shall specifically see that questions attempting to tarnish the image of any individual be avoided and cross-examination and other evidence be strictly in conformity for the purpose of a proper disposal of the case.

iii) The case which stands posted on 25.5.2007 shall not be proceeded on that day for final disposal. But the Court is directed to post the matter on 31.5.2007 so as to

enable the writ petitioner to file an application as discussed above.

M.N.KRISHNAN
Judge

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